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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91214649
Party	Defendant Benny Hodge
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Submission	Other Motions/Papers
Filer's Name	Benny Hodge
Filer's e-mail	bennyhodge25@yahoo.com
Signature	/Benny Hodge/
Date	02/25/2015
Attachments	APPLICANTS response to reply in support.pdf(235220 bytes) OPPOSERS REPLY IN SUPPORT OF SANCTION.pdf(121090 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Mark: BENNY HUNNA

Serial No: 85/920,599

Filing Date: May 1, 2013

NOODLE TIME, INC. vs. BENNY HODGE

Opposition No: 91214649

RESPONSE TO REPLY IN SUPPORT OF OPPOSER'S MOTION FOR
ENTRY OF JUDGEMENT AS A SANCTION FOR APPLICANT'S
FAILURE TO FULLY COMPLY WITH THE BOARD'S ORDER DATED
DECEMBER 5, 2014

INTRODUCTION

Applicant, Benny Hodge, hereby respectfully submits this RESPONSE TO REPLY IN SUPPORT OF OPPOSER'S MOTION FOR ENTRY OF JUDGEMENT AS A SANCTION FOR APPLICANT'S FAILURE TO FULLY COMPLY WITH THE BOARD'S ORDER DATED DECEMBER 5, 2014. Opposer filed a REPLY IN SUPPORT OF OPPOSER'S MOTION FOR ENTRY OF JUDGEMENT AS A SANCTION FOR APPLICANT'S FAILURE TO FULLY COMPLY WITH THE BOARD'S ORDER DATED DECEMBER 5, 2014 on February 17, 2015.

REPLY TO APPLICANT HAS FAILED TO SUBSTANTIVELY
SUPPLEMENT HIS INITIAL ANSWERS RESPONSES AND
DOCUMENT PRODUCTION AS ORDERED BY THE TTAB

Opposer has admitted to receiving “documents” from Applicant in the form of internet websites. Applicant has provided Opposer’s with his social media sites he controls for the Subject Mark BENNY HUNNA. Applicant has made a typo to his Facebook and Twitter web page by placing commas at the end of the websites to separate them and is submitting the following respectfully as corrections to the typing error. Applicant made a typing error on one letter in his Youtube webpage address typing a “w” instead of an “s” and is submitting the following respectfully as corrections to the typing error.

<https://www.youtube.com/channel/UCrTqkOargZoEXYzsomfJ3dA>

<https://www.facebook.com/benny.hunna1>

<https://twitter.com/h2hunna>

Applicant objects to Opposer’s allegations that Applicant’s Interrogatory No. 6 response conflicts. Applicant produces and edits his own videos and it cost him nothing to make them and post them on his Youtube, Facebook, and Twitter pages.

REPLY TO DISCOVERY DATES SHOULD BE RESET

Applicant has complied with the Board’s Order and Applicant respectfully request that dates remain as set by Board. Applicant requests if Discovery dates are reset then Applicant respectfully requests the Board reset the Discovery for both parties.

CONCLUSION

Applicant respectfully request that the Board DENY Opposer’s MOTION OF ENTRY OF JUDGMENT AS A SANCTION FOR APPLICANT’S FAILURE TO COMPLY WITH THE BOARD’S ORDER DATED DECEMBER 5, 2014 due to Applicant’s compliance.

Dated: February 25, 2015

2/25/2015

X Benny Hodge

Benny Hodge
Defendent
Signed by: FedEx Office

Benny Hodge

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing RESPONSE TO REPLY IN SUPPORT OF OPPOSER'S MOTION FOR ENTRY OF JUDGEMENT AS A SANCTION FOR APPLICANT'S FAILURE TO FULLY COMPLY WITH THE BOARD'S ORDER DATED DECEMBER 5, 2014 has been served on Opposers in the following manner:

BY E-MAIL

Janet C. Moreira

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**

NOODLE TIME, INC.,
Opposer,

Opposition No.: 91214649

v.

Mark: **BENNY HUNNA**

Serial No.: 85/920,599

BENNY HODGE,
Applicant.

Filing date: May 1, 2013

Publication Date: October 8, 2013

**REPLY IN SUPPORT OF OPPOSER'S MOTION FOR ENTRY OF JUDGMENT AS A
SANCTION FOR APPLICANT'S FAILURE TO FULLY COMPLY WITH THE
BOARD'S ORDER DATED DECEMBER 5, 2014**

I. INTRODUCTION

Opposer, Noodle Time, Inc. ("NTI" or "Opposer"), by and through undersigned counsel, hereby submits the following Reply Memorandum in support of its Motion For Entry of Judgment As a Sanction for Applicant's Failure to Fully Comply with the Board's Order Dated December 5, 2014 ("Motion"). Applicant filed a Response to Opposer's Motion on February 13, 2015¹.

II. APPLICANT HAS FAILED TO SUBSTANTIVELY SUPPLEMENT HIS INITIAL ANSWERS, RESPONSES AND DOCUMENT PRODUCTION AS ORDERED BY THE TTAB

Applicant's Response focuses solely on the "Definition" of the term "Document" as set forth in Opposer's First Set of Interrogatories. See Exhibit 1 to Response. Specifically, Applicant contends that because said term is defined to include "internet websites, social media

¹ In his Response (D.E. 14), Applicant states that he filed a Motion to Withdraw (D.E. 13) his prior Motion to Suspend Proceedings Pending Civil Action. Thus, the only motion pending before the Board in this matter is NTI's Motion.

accounts and social profiles,” and Applicant has provided a list of Internet websites in Applicant’s supplemental response to Request No. 4, Applicant has complied with the Board’s Order. Applicant’s supplemental response to Request No. 4 is set forth below:

4. All documents sufficient to identify all trade channels through which you sell, advertise, promote or offer to sell, advertise or promote any products and/or services using the Subject Mark.

Answer: The Subject Mark has no sales and **is not offered to be sold**. The Subject Mark is promoted and advertised at URL <https://www.youtube.com/channel/UCrTqkOarqZoEXYzwomfJ3dA>, <https://www.facebook.com/benny.hunna1>, <https://www.twitter.com/H2HUNNA>, https://linkedin.com/profile/view?id=347046776&trk=nav_responsive_tab_profile

See Applicant’s Supplemental Response attached as Exhibit 3 to Applicant’s Response (emphasis added). The text in bold typeface is the portion of Applicant’s response that provides allegedly new or supplemental information.

Applicant basically contends that by listing four (4) websites in response to Document Request No. 4 that Applicant has fully complied with the Board’s Order dated December 5, 2014. Applicant, however, failed to (once again) provide **any** documents associated with the above listed websites, such as copies of website pages or copies of the videos posted therein. Additionally, Applicant’s supplemental response to Request No. 4 continues to be deficient in that Applicant does not include other websites, such as reverbnation.com and HunnaTV.net, which also “promote” Applicant’s services under the Subject Mark. See Exhibits 1 and 2 attached hereto (print-out from websites at reverbnation.com and HunnaTV.net, respectively).

Moreover, Applicant’s Supplemental Responses continue to conflict with other responses set forth in the same document. For instance, see Interrogatory No. 6 and Applicant’s supplemental response thereto, as set forth below:

6. State Applicant's yearly expenditures for every year within the last five years with respect to the advertising and marketing of products and services identified in Interrogatory No. 1.

Answer: Applicant's yearly expenditures with respect to advertising and marketing of products and services identified in Interrogatory No. 1 are zero dollars.

See Exhibit 3 to Response. Applicant has admitted that he promotes his services online. In fact, Applicant has posted several different music videos, each of which includes different people, settings, etc. Applicant, however, in his answer to Interrogatory No. 6, copied above, continues to allege that he has not incurred any cost or expenditure in creating and distributing his music videos². Simply stated, Applicant has yet to fully comply with the Board's Order dated December 5, 2014.

III. DISCOVERY DATES SHOULD BE RESET

Having withdrawn his Motion to Suspend Proceedings In View of Civil Action (See Motion to Withdraw, D.E. 13), Applicant now requests that the discovery deadlines remain the same, as set forth in the Board's Order dated November 4, 2014. Discovery in this matter closed on December 29, 2014. Yet NTI has no responsive documents and virtually no responses. Applicant has conducted zero discovery in this matter. Without discovery, any deposition of Applicant is essentially meaningless. Further, in the event the Board does not grant the relief sought by Opposer in this motion, NTI cannot realistically proceed to summary judgment or trial until the Board determines an appropriate sanction. If the Board does not enter judgment in the favor of NTI, then NTI requests that the discovery period be reset for NTI only to provide a

² Applicant's Answer to Interrogatory No. 6, as set forth in his Supplemental Responses (and copied above), is exactly the same as Applicant's initial answer to Interrogatory No. 6, except for the term "are" prior to the phrase "zero dollars."

reasonable time (at least 30 days from any deadline for actual receipt of responsive documents or other information) for NTI to take depositions.

IV. CONCLUSION

Opposer respectfully requests that the Board grant its Motion For Entry of Judgment as a Sanction for Applicant's Failure to Comply with the Board's Order Dated December 5, 2014.

Dated: February 17, 2015

/s/ Stephanie C. Alvarez /

Janet C. Moreira, Esq.

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CERTIFICATE OF ELECTRONIC TRANSMISSION

The undersigned hereby certifies that this document is being transmitted electronically through ESTTA pursuant to 37 C.F.R. § 2.195(a) on **February 17, 2015**

/s/Stephanie C. Alvarez /

Stephanie C. Alvarez

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing document has been served on all counsel and/or parties of record via electronic mail transmission on February 17, 2015 as follows:

By Email: bennyhodge25@yahoo.com

Benny Hodge
122 Country Club Drive
Greenwood, MS 38930

/s/Stephanie C. Alvarez/
Stephanie C. Alvarez
